

CONTRACT AWARD NOTIFICATION

ANNUAL REQUIREMENTS FOR MOBILE COMMUNICATIONS TERMINAL

DATE: November 12, 2004

CONTRACT PERIOD: Oct.6, 2004 to Oct 05, 2005

CONTRACTOR: QualComm Incorporated
5775 Morehouse Dr
SanDiego CA 92121-1714

PURCHASING DIVISION
K-STREET COMPLEX
440 SOUTH 8TH STREET
LINCOLN, NEBRASKA 68508
(402) 441-7410

Company Representative: Cindy Copperthite
Telephone No.: 858-845-6632
FAX No.: 858-658-1555
E-Mail Address:

THE CITY/COUNTY'S SPECIFICATIONS AND THE CONTRACTOR'S ACCEPTED PROPOSAL AND PRICING SCHEDULES, NOW ON FILE IN THE OFFICE OF THE CITY CLERK AND/OR THE COUNTY CLERK, ARE ADOPTED BY REFERENCE AND ARE AS FULLY A PART OF THIS CONTRACT FOR THE ABOVE-NAMED COMMODITY AS IF REPEATED VERBATIM HEREIN.

To Piggy back off Inter-Governmental
Contract Doc # 04-121R1

NO ACTION NEED BE TAKEN BY THE CONTRACTOR AT THIS TIME. ORDERS FOR MATERIAL WILL BE MADE AS NEEDED BY THE VARIOUS CITY/COUNTY DEPARTMENTS.

DEPARTMENTS REQUIRING CATALOGS AND/OR PRICING SCHEDULES SHALL NOTIFY THE CONTRACTOR DIRECTLY.

Proposal for

FEMA Urban Search & Rescue-Nebraska Task Force 1

LINCOLN FIRE & RESCUE, NEBRASKA TASK FORCE 1 (NETF-01)

1801 Q Street
Lincoln, NE 68508

Attention: Rick Klein
Telephone: 402-441-8799
Facsimile: 402-441-8292

04090104

Document No.: 04-121R1

12 August 2004

Ms. Cindy Copperthite
QUALCOMM Incorporated
5775 Morehouse Drive
San Diego, CA 92121-1714
Phone: (858) 845-6632
Fax: (858) 658-1555

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1 Introduction

The enclosed Proposal No. 04-121R1 for QUALCOMM's OmniTRACS® System is being offered to Lincoln Fire & Rescue, Nebraska Task Force 1 (NETF-01) for the Federal Emergency Management Agency (FEMA) Urban Search & Rescue Task Force 1. This proposal supercedes QUALCOMM's proposal No. 04-021, dated 07 July 2004, in its entirety and provides pricing for additional hardware, maintenance, and messaging items. This Proposal is based on a Government Commercial Item Acquisition as defined in FAR Part 2.1 and implemented in FAR Part 12.

This Proposal has been organized into five (5) Parts in order to facilitate review by NETF-01.

- Part 1 is a brief Introduction.
- Part 2 contains QUALCOMM's Ground Rules, Assumptions and Conditions that correspond with the prices proposed in Part 3.
- Part 3 contains the Price Summary.
- Part 4 incorporates the contract terms and conditions that are provided in Addendum 1, Addendum 2 and Addendum 3 in a format ready for incorporation into the anticipated contract by attachment and shall be the governing terms and conditions of any contract placed with QUALCOMM for the products and services stated herein.
- Part 5 provides the Addendum 4, Statement of Work for Commercial Services.

2

Ground Rules, Assumptions and Conditions

QUALCOMM Proposal No. 04-121R1, dated, 12 August 2004, is being submitted at the request of NETF-01. QUALCOMM's response is based on the following Ground Rules, Assumptions and Conditions:

A. General

1. This Proposal is valid through 30 September 2004. This Proposal is based on a contract awarded to QUALCOMM on or before 30 September 2004. The period of performance for the contract shall be for twelve (12) months following the date of contract definitization. The proposed delivery date for the Equipment is no later than eight (8) weeks after contract definitization.
2. This Proposal is based upon the mutual written acceptance of the contract by NETF-01 and QUALCOMM, incorporating in its entirety QUALCOMM's commercial terms and conditions which are provided in Part 4 in a format ready to append to the contract agreement by attachment and which shall be the governing terms and conditions of any contract placed with QUALCOMM for the products and services stated herein.
3. The price stated in CLIN 0001 does not include Equipment installation. The price for Equipment installation is included in CLIN 0011, and shall be performed by QUALCOMM personnel and/or personnel who have been properly trained and qualified by QUALCOMM to perform the installation.
4. This proposal and the information contained herein are company confidential and proprietary to QUALCOMM Incorporated. By accepting this document, the recipient agrees to use such materials and information subject to the terms on the cover page solely for the purposes of evaluating this proposal, and to hold such document and information personal and confidential.

B. Equipment

1. The Equipment being offered under Part 3 of this proposal was designed for optimum performance within the Continental United States. While the Equipment may operate in other countries outside the Continental United States, the quality of performance may vary. QUALCOMM shall not be liable for any performance and/or system degradation or failure of the Equipment in Countries outside the Continental United States.
2. Equipment being purchased is for delivery to NETF-01.

C. Software

This Proposal does not include OmniTRACS QTRACS® software.

D. Messaging and Services

This proposal does not include OmniTRACS Messaging Services. All messaging shall be provided by the FEMA, Urban Search and Rescue Headquarters (USRIHQ).

E. Warranty and Extended Maintenance

1. After the expiration of the standard twelve (12) month Equipment Warranty, Annual Extended Equipment Maintenance is available at the price provided in CLIN 0005 of this proposal. If Extended Equipment Maintenance is not purchased, repairs will be performed at the "Per Occurrence Repair Rate" stated in CLINs 0006, 0007, 0008, 0009 and 0010 of this proposal. NETF-01 would need to provide funding for the Per Occurrence Repairs if Annual Extended Equipment Maintenance is not purchased.
2. Extended Equipment Maintenance can only be purchased for a Customer's entire fleet of Integrated Mobile Communication Terminals (IMCTs); not for individual IMCTs.

F. Commercial Services

1. The Commercial Services to be provided in accordance with Part 5 - SOW and as priced in CLIN 0011 will be conducted by QUALCOMM at the mutually agreed upon single location between NETF-01 and QUALCOMM certified personnel within the Continental United States.
2. The IMCT installation and operational training shall not exceed three (3) days in length for a class of up to five (5) students. All training material shall be in QUALCOMM commercial format. The training course will be conducted in English. NETF-01 shall have and make available the four (4) vehicles for the installation and training period.
3. All travel and expenses for this effort are included in CLIN 0011.

3 Price Summary

Table 3-1. Vehicle Equipment

Contract Line Item	Description	Quantity	Price	Extended Price
0001	Integrated Mobile Communication Terminal (IMCT) kit consisting of: Antenna Communication Unit (ACU) with Integrated GPS (IGPS) (including cables), Circular Polarized Antenna, Enhanced Display Unit (EDU) Kit with Holster Kit, Emergency Panic Button, and Power/Accessory Cables - P/N 10-J1662-418	2	\$2,380.00 each	\$4,760.00
0002	Integrated Mobile Communication Terminal (IMCT) kit consisting of: Antenna Communication Unit (ACU) with Integrated GPS (IGPS), Circular Polarized Antenna, Enhanced Display Unit (EDU) Kit with Holster Kit and cables and an Emergency Panic Button	2	\$2,235.00	\$4,470.00
0003	AMA 29 Mount - P/N 10-3067-1	2	\$50.00 each	\$100.00

Table 3-2. Vehicle Equipment Maintenance

Contract Line Item	Description	Quantity	Price	Extended Price
0004	Standard Twelve (12) Month Equipment Warranty	12 months	NSP	NSP
0005	Annual Extended Equipment Maintenance Based on four (4) IMCT @ \$180.00 per year per IMCT	4	\$180.00 per year per IMCT	\$720.00
0006	ACU Per Occurrence Repair Rates Minor: Mechanical piece parts	TBD	\$270.00 each	TBD
0007	ACU Per Occurrence Repair Rates Mid: Board repairs and replacement of minor assemblies	TBD	\$400.00 each	TBD
0008	ACU Per Occurrence Repair Rates Major: Board assembly	TBD	\$1,100.00 each	TBD

Contract Line Item	Description	Quantity	Price	Extended Price
0009	ACU Per Occurrence Repair Rates Cannot Duplicate Reported Customer Failure	TBD	\$270.00 each	TBD
0010	EDU Per Occurrence Repair Rates	TBD	\$275.00 each	TBD

Table 3-3. Commercial Services

Contract Line Item	Description	Quantity	Price	Extended Price
0011	Commercial Services in accordance with Addendum 4: SOW, to include: a) Installation of four (4) Integrated Mobile Communication Terminals (IMCTs) b) Training on operational use and installation of the IMCTs	Lot	\$6,618.00	\$6,618.00

4 Terms and Conditions

Addendum 1: 52.212-4 Contract Terms and Conditions- Commercial Items

ADDENDUM 1

Contract Terms and Conditions – Commercial Items (tailored)

52.212-4 – Contract Terms and Conditions – Commercial Items (Oct 2003)

As prescribed in 12.301(b)(3), insert the following clause:

(a) *Inspection/Acceptance.* Tailored to Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Government wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* Tailored to Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

(i) Name and address of the Contractor; (ii) Invoice date and number; (iii) Contract number, contract line item number and, if applicable, the order number; (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered; (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading; (vi) Terms of any discount for prompt payment offered; (vii) Name and address of

official to whom payment is to be sent; (viii) Name, title, and phone number of person to notify in event of defective invoice; and (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in the contract. (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-2 Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waives the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

See also Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(h) *Patent indemnity.* Reserved

(i) *Payment.* (1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(j) *Risk of loss.* Tailored to Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(k) *Taxes.* Tailored to Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract

cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

See also Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(n) *Title.* Tailored to Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(o) *Warranty.* Tailored to Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(p) *Limitation of liability.* Tailored to Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including Addendum 2 QUALCOMM's OmniTRACS and OmniExpress Commercial Item Contract Terms and Conditions dated 06/30/04 and Addendum 3 QUALCOMM Commercial Service Contract Terms and Conditions dated 02/28/04.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(i) *Central Contractor Registration (CCR).*

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of a contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of the contract and is not a substitute for a properly executed contract document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements paragraph (i)(2)(i) of this clause, or fails to perform the agreement paragraph (i)(2)(i)(C) of this clause; and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of the contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of Clause)

**Addendum 2: QUALCOMM Incorporated
Commercial Item Contract Terms and
Conditions for OmniTRACS and OmniEXPRESS**

ADDENDUM 2
QUALCOMM Incorporated OmniTRACS® and OmniExpress® Commercial
Item Contract Terms and Conditions

GENERAL

The OmniTRACS satellite-based Integrated Mobile Communications Terminals ("IMCTs"), the OmniExpress digital, Terrestrial Mobile Communications Terminals ("TMCTs") (both collectively, the "Terminal" or "Terminals") and other equipment ordered under the Contract (collectively, the "Equipment"), the Software as defined in Section 2.1, and the Service as defined in Section 3.1, or any part thereof, shall be delivered in accordance with the terms and conditions stated herein following finalization of a mutually agreed upon Contract and delivery schedule (collectively the "Contract").

1. EQUIPMENT

1.1. Delivery, Title and Risk of Loss. QUALCOMM will ship Equipment ordered under the Contract FOB Destination. Risk of loss or damage to the Equipment shall remain with QUALCOMM until, and shall pass to the Buyer or in the case of resale or transfer to the U.S. Government ("End User") upon delivery of the Equipment to the Buyer or End User's receiving dock ("Delivery Point"). Buyer shall receive title to all deliverable Equipment (excluding the firmware), upon delivery to the Delivery Point. Delivery to the Delivery Point shall obligate the Buyer to the payment conditions indicated in Section 4 of these terms and conditions and the burden of QUALCOMM, with respect to the deliverables, will have been satisfied in its entirety.

1.2. Inspection and Acceptance. Customary with commercial practices, no in-process inspection or testing by Buyer is permitted under this Contract. No signed Department of Defense Form 250 (DD250), Department of Defense Form 1155 (DD1155) or Standard Form 1449 (SF1449) shall be required for inspection and acceptance. Buyer shall rely on QUALCOMM's existing commercial quality assurance system as substitute for Buyer's inspection and testing before tender for acceptance. Acceptance of the Equipment shall be deemed to have occurred fifteen (15) days after the date of shipment, unless during the fifteen-day period Buyer notifies QUALCOMM in writing of rejection due to non-conformance of the Equipment. If Buyer elects to return such non-conforming Equipment to QUALCOMM, QUALCOMM may, at QUALCOMM's sole discretion, either repair or replace the non-conforming Equipment with conforming Equipment. QUALCOMM shall be entitled to affix tags, decals, or plates to the Equipment indicating QUALCOMM as the manufacturer of the Equipment and displaying any QUALCOMM trademarks. Any such affixed tags, decals or plates shall be in accordance with industry standards.

1.3. Installation of Terminals and Installation Warranty. Buyer is responsible for obtaining any necessary approvals for after-market installation of Terminals on Buyer's vehicles which are under the vehicle manufacturer's warranty and QUALCOMM disclaims any liability therefor. Installation shall be performed as follows: (i) QUALCOMM will install the Terminals at locations and dates to be mutually agreed upon by QUALCOMM and Buyer for the installation price set forth in the Contract, and in accordance with this Section 1.3, or (ii) if not installed by QUALCOMM then Terminal installation will be at Buyer's expense and will be only performed by an installer trained and certified by QUALCOMM to perform Terminal installation. No Terminals shall be installed using mounting brackets which are not provided by QUALCOMM or which do not meet the specifications set forth in the bracket specification manuals published from time to time by QUALCOMM. Any other mounting bracket proposed for use by Buyer shall be subject to advanced written approval by QUALCOMM's mechanical engineering staff as meeting or exceeding minimum design standards, subject to the payment by Buyer of any costs incurred by QUALCOMM in performing the analysis necessary for such approval.

QUALCOMM warrants that for ninety (90) days from the date on which the Service (as defined in Section 3.1) is first activated for any Terminal installed by QUALCOMM and operated in accordance with QUALCOMM's operating instructions, such Terminal will provide the Service. In the event such Terminal fails to provide the Service during such ninety (90) day period and QUALCOMM determines that such failure is due to improper installation by QUALCOMM, QUALCOMM will provide free of charge the necessary parts and labor to correct the installation.

1.4. Firmware. The terminal applications and modem software are resident in the Equipment for use of the OmniTRACS System and the OmniExpress System ("Firmware"). During the Term of this Contract, QUALCOMM grants to Buyer a non-exclusive, irrevocable license to use the Firmware solely (i) in conjunction with use of the OmniTRACS System or the OmniExpress System (collectively, the "Systems"), and (ii) with Equipment installed and used on Buyer's vehicles or independent contractors' vehicles who are contracting with Buyer. QUALCOMM further grants to Buyer the right to transfer its license to use the Firmware during the useful life of the Equipment in conjunction with the transfer of its ownership. QUALCOMM may condition its agreement to provide the Service to any transferee upon QUALCOMM's approval of transferee's creditworthiness, the payment by transferee of a re-licensing fee and/or the upgrade of Equipment at transferee's expense.

1.5. Equipment Warranty. QUALCOMM warrants that for twelve (12) months after shipment (the "Warranty Period"), the Terminals (including Firmware) shall be free from material defects in materials or workmanship and capable of providing the Service in accordance with QUALCOMM's specifications for the Terminals as of the date of shipment ("Good Working Order") (the "Warranty"). Buyer shall remove and return to QUALCOMM at Buyer's expense and risk of loss, the failed Terminal component which is not in Good Working Order. QUALCOMM shall perform maintenance in accordance with QUALCOMM's standard Equipment maintenance procedures and deliver to Buyer, free of charge, a replacement Terminal component (which may be refurbished). The Warranty is limited to repair or replacement of defective or non-performing Terminal components as required to restore the item to Good Working Order to equivalent Terminal specifications of the replaced component. Upon Buyer's receipt, title to the replacement component shall vest in Buyer to the same extent that title to the replaced component was vested in Buyer. Title to the replaced component shall vest in QUALCOMM. Replacement components or Terminals shall be subject to the greater of the remaining Warranty term applicable to the replaced component or a ninety (90) day service warranty beginning as of the date such replacement item is shipped. The Equipment is designed for optimum performance within the Continental United States only. While the Equipment may operate in countries outside

not be liable for any performance and/or system degradation or failure of the Equipment perform in countries outside the Continental United States.

1.6. Warranty Exclusions. QUALCOMM excludes from the Warranty and from Extended Equipment Maintenance, and has no obligation to repair or replace, any Terminal which is not in Good Working Order due to: (i) use of the Terminal with cable connections, mounting brackets, other than those furnished by QUALCOMM or approved by QUALCOMM, (ii) damage to antennas, radomes (including painting) or other Terminal components resulting from physical impact or other abuse following delivery; (iii) improper handling of any component of the Equipment, including the Firmware resident in Terminal, or (iv) alteration, modification or repair other than pursuant to QUALCOMM equipment maintenance procedures. Buyer further acknowledges that the Terminals have been sealed and that if the seal is broken the Warranty is voided for the Terminal. Consumable items such as cables, mounting brackets, pagers, panic buttons, wireless panic buttons, fly-away kit case, and fly-away kit power subsystem module are excluded from the Warranty and shall be covered by the manufacturer's warranty. QUALCOMM's sole obligation in connection therewith shall be to use reasonable efforts to assist Buyer in obtaining warranty service, at Buyer's expense.

1.7. Extended Equipment Maintenance. QUALCOMM's Extended Equipment Maintenance ("Extended Equipment Maintenance") is available to the Buyer for any Equipment maintenance following expiration of the Warranty Period. The Buyer may elect to purchase QUALCOMM's annual Extended Equipment Maintenance at the time the Contract award or at any time prior to expiration of the Warranty Period at the then-current Extended Equipment Maintenance Price. Under Extended Equipment Maintenance, QUALCOMM shall continue to provide the maintenance service described in this Section for Customer's Terminals during the remainder of the Term at the Extended Equipment Maintenance rate. Extended Equipment Maintenance is available only for Terminals less than sixty (60) months old. For repairs which are not covered under the Warranty, Extended Equipment Maintenance, such maintenance action will be billed at either the Occurrence Rates set forth in the Contract or the then-current spare parts price.

1.8. Panic Button/Wireless Panic Button. QUALCOMM's Panic Button (the "PB") consists of a pushbutton switch, mounting hardware, and associated cables. QUALCOMM's Wireless Panic Button (the "WPB") consists of one (1) receiver, two transmitters, one (1) remote antenna, and associated cables and connectors both of which can be used to send an over-the-air panic message using the OmniTRACS System.

1.8.1. Notification of Panic Button/Wireless Panic Button Alert. QUALCOMM shall notify Buyer when one of Buyer's drivers pushes its PB or WPB. Upon QUALCOMM receipt of an alert to QUALCOMM's NMF, a QUALCOMM employee will telephone Buyer once, at the phone number specified by the Buyer in the Contract to inform Buyer that a PB or WPB alert has been sent and QUALCOMM will also provide Buyer with (i) IMCT/TMCT identification number which sent the PB or WPB alert, (ii) the time that the PB or WPB alert was sent, and (iii) the latitude and longitude (location) of the IMCT/TMCT the time the PB or WPB alert was sent. In the event that the telephone line is busy or non-functioning, QUALCOMM agrees to telephone Buyer once at the specified backup number indicated by the Buyer in the Contract (the "Backup Number"). In the event that the Backup Number is busy and/or not functioning, QUALCOMM is not obligated to attempt another telephone call to Buyer. In such case, the PB or WPB alert is delivered to Buyer in ordinary course of business. Under no circumstances and under no theory of liability shall QUALCOMM be liable to Buyer for failure to notify Buyer, via telephone, that a PB or WPB alert has been sent. It is Buyer's responsibility to notify QUALCOMM if the primary telephone number and/or the Backup Number changes.

1.8.2. Service Fees. Buyer agrees to pay the (i) service charge set forth in the Contract and the (ii) Regular Message Rate as set forth in the Contract each time the PB or WPB is pressed (collectively the "PB Service Fee" or the "WPB Service Fee"). In addition to the PB or WPB Service Fee, Buyer shall pay QUALCOMM the price set forth in the Contract each time QUALCOMM telephones Buyer to inform Buyer that one of its drivers has sent a PB or WPB alert (the "PB Notification Fee" or the "WPB Notification Fee").

1.8.3. Installation Pricing. If PB or WPB installation is done concurrently with IMCT/TMCT installation by a QUALCOMM authorized service center, the installation shall be \$80.00 in addition to the IMCT/TMCT installation price. For PBs or WPBs installed by a QUALCOMM authorized service center independently of an IMCT/TMCT installation, the installation price shall be \$100.00.

1.8.4. Use. The WPB is designed to operate within 100 feet of the vehicle with clear line-of-sight (no obstructions) between the WPB antenna and the remote transmitter. Buyer acknowledges that if the PB or WPB is activated on MGTs with Part No. 10-30000, when the unit is in "sleep" mode, the PB or WPB message will not be sent or received.

1.8.5. Mandatory Training. PB or WPB user and installation training is mandatory ("PB Training" or the "WPB Training") if Buyer installs the PB or WPB. QUALCOMM shall provide Buyer one (1) day of PB Training or WPB Training at Buyer's facility for the price \$1,500.00. It shall be the responsibility of Buyer to train additional Buyer service technicians to ensure compliance with QUALCOMM installation procedures. Out-of-pocket expenses incurred by Buyer in attending such training sessions, including travel, per diem, labor, and other miscellaneous expenses shall be the responsibility of Buyer.

1.8.6. Data Retention. Notwithstanding the data retention policy set forth in Section 2.1, Buyer acknowledges that QUALCOMM shall maintain beyond the data retention period set forth in the Contract historical records of instances of the PB or WPB being pressed, telephone calls to Buyer.

2. SOFTWARE

2.1. Software License. For all software and documentation (the "Software") licensed to Buyer by QUALCOMM under this Contract, QUALCOMM grants to Buyer a non-exclusive license to use the Software solely in conjunction with the Systems on one central processing unit at one (1) location meeting QUALCOMM's specifications. To the extent that QUALCOMM is a subcontractor under a U.S. Government prime contract, Buyer is authorized to sublicense to the End User for End User use only. Buyer shall not and shall ensure that End User shall not copy the Software (except for a reasonable number of copies for back-up and archival purposes) or alter, modify, adapt, translate, decompile, disassemble, reverse engineer or create derivative works of the Software (including the Firmware). QUALCOMM and its licensors retain all right and title to the Software, including but not limited to all copyright, trade secret and other intellectual or proprietary rights to the Software. Buyer shall not and shall ensure that End User shall not remove any copyright notices or any confidential or proprietary legends from the Software. Within thirty (30) days after termination or expiration of this Contract, Buyer shall and shall ensure that End User shall return to QUALCOMM or destroy (and certify such destruction) all copies of the Software and supporting documentation.

2.2. Delivery, Inspection, Acceptance and Installation. QUALCOMM will ship Software ordered under this Contract FOB Destination. Risk of loss or damage to the Software media shall remain with QUALCOMM until, and shall pass to the Buyer or in the case of resale or transfer to a U.S. Government ("End User") upon delivery of the Software Media to the Buyer or End User's receiving dock ("Delivery Point"). Customary with commercial practices, no in-process inspection or testing by Buyer is permitted under this Contract. No signed Department of Defense Form 250 (DD250), Department of Defense Form 1155 (DD1155) or Standard Form 1449 (SF1449) shall be required for inspection and acceptance. Buyer shall rely on QUALCOMM's existing commercial quality assurance system as substitute for Buyer inspection and testing before tender for acceptance. For Software installed by QUALCOMM, acceptance shall be deemed to have occurred upon completion of installation; in all other cases, acceptance of the Software shall be deemed to have occurred fifteen (15) days after shipment, unless during the fifteen (15) day period Buyer notifies QUALCOMM in writing of rejection due to non-conformance of the Software media. If Buyer elects to return such non-conforming Software media to QUALCOMM, QUALCOMM may, at QUALCOMM's sole discretion, either repair or replace the non-conforming Software media with conforming Software media. Shipment of the software media shall obligate the Buyer to the payment conditions indicated in Section 4 of these terms and conditions and the burden of QUALCOMM, with respect to the deliverables, will have been satisfied in its entirety. Unless otherwise expressly agreed, Buyer shall be responsible for installing the Software into its Authorized Equipment at the site. For Software installed by QUALCOMM, QUALCOMM will install the Software pursuant to a schedule mutually agreed upon by QUALCOMM and Buyer and at the software installation price negotiated between the parties.

2.3. Software Warranty. QUALCOMM warrants that for a period of twelve (12) months from the date of shipment (the "Software Warranty Period"), each Software product shall be free from material defects or errors and capable of performing in accordance with its specifications (the "Software Warranty"). If, during the Software Warranty Period, Buyer discovers and notifies QUALCOMM of any material defects or errors, QUALCOMM will use reasonable efforts to correct the defects or errors, provided that QUALCOMM can repeat the defect or error, and the Software has not been subjected to misapplication, misuse, modification, improper use with other software, damage, or negligence. Buyer will cooperate with QUALCOMM for the provision of Software Warranty services, and the performance of Warranty Services may require down-time of the Authorized Equipment. QUALCOMM makes no warranty that operation of the Software will be uninterrupted or error free or that any errors discovered can be corrected. During the Software Warranty Period, Buyer will also be entitled to receive maintenance for the Software ("Software Maintenance") at no additional cost consisting of: (i) upgrades and enhancements when such upgrades and enhancements are developed by QUALCOMM and made generally available without cost to other licensees of the Software, (ii) Software telephone support to assist Buyer's designated technical representative(s), (iii) fixes for deviations between the Software and the documentation furnished by QUALCOMM, and (iv) applicable Software documentation updates. If Buyer requests that QUALCOMM make repairs for defects traceable to Buyer's errors or those of a third party, or to provide support for third party operating systems, Buyer shall pay for QUALCOMM's services at QUALCOMM's then current commercial service rates plus reimbursement for reasonable travel and per diem expenses.

2.4. Extended Software Maintenance. QUALCOMM's Extended Software Maintenance ("Extended Software Maintenance") is available to the Buyer for annual Software maintenance following expiration of the Software Warranty Period. The Buyer may elect to purchase QUALCOMM's Extended Software Maintenance at the time of Contract award or by new purchase order for each Software product licensed under this Contract calculated at fifteen (15%) of the current price for the licensed Software product (the "Annual Software Maintenance Fee"). QUALCOMM will invoice Buyer for the first Annual Software Maintenance period one (1) month prior to expiration of the Software Warranty Period. Thereafter, the Annual Maintenance period shall be due and payable annually within thirty (30) days after the expiration of the previous Extended Software Maintenance Period. QUALCOMM's Extended Software Maintenance shall be limited to support of the current version and the immediately previously released version of the Software product. If QUALCOMM fails to fulfill its Extended Software Maintenance obligations as set forth herein for any licensed Software product, Buyer's sole and exclusive remedy is the right to terminate the Extended Software Maintenance immediately for the Software product and QUALCOMM shall refund to Buyer any prepaid Annual Software Maintenance fee, prorated based upon a thirty (30) day month, beginning from the effective date of such termination.

3. SERVICE.

3.1. Service. The OmniTRACS Service is a two-way satellite-based mobile data messaging and position location reporting service that uses Ku-band satellites (the "OmniTRACS Service"). The OmniExpress Service is a two-way terrestrial-based, mobile data messaging and position location reporting service that uses a digital, CDMA wireless network (the "OmniExpress Service") and that has an option for voice service (the "Voice Service"). The OmniTRACS Service and the OmniExpress Service are collectively referred to as the "Service(s)". In the event Buyer elects to receive Voice Service in conjunction with the OmniExpress Service, Buyer shall enter into a separate agreement with QUALCOMM.

3.2. Buyer Service. Buyer may call the QUALCOMM Buyer Service Center at (800) 7490 if there is an operational issue with the Equipment, Software or Service, or if service/information is required.

3.3. Activation of the Service. The Service for each Terminal is considered to be activated in Buyer's message service account upon the earlier of the date on which Buyer requests QUALCOMM to activate the Service for the Terminal or thirty (30) days after date of shipment of the Terminal. At the time of activation, Services and the associated service rates and/or fees shall commence for all such activated Terminals and continue in effect for the remainder of the Term and Extended Term, if applicable.

3.4. Service Warranty. QUALCOMM warrants that Service Availability shall be at least 98% per month for all hours, except from 10 p.m. to 3 a.m., Pacific Time, by QUALCOMM generally performs periodic maintenance actions. "Service Availability" means: (i) provision of the OmniTRACS Service to Buyer (provided the IMCT is within line-of-sight of the satellite) free from interruption or break and shall include, in addition to the ability of QUALCOMM's Network Management Center ("NMC") to receive Buyer's inbound messages to the IMCT, the ability to transmit the outbound messages from the NMC to the involved satellite for transmission to an IMCT, and the ability to receive a message from the involved satellite an acknowledgment that originated at the IMCT that the message has been received; or (ii) provision of the OmniExpress Service to Buyer (provided the Terminal is in a Covered Area) free from interruption or break and shall include, in addition to the ability of QUALCOMM's NMC to receive Buyer's outbound messages to the TMCT, the ability to transmit the outbound messages from the NMC to the digital CDMA network for transmission to the TMCT, and the ability to receive at the NMC from the digital CDMA network an acknowledgment that originated at the TMCT that the message has been received. "Covered Areas" shall mean those geographic areas in the continental United States where the CDMA wireless network provider is providing coverage for commercial use that is data-capable. Service Availability for the OmniTRACS and OmniExpress Services is predicated upon normal usage for Terminals in service in the United States and does not include interruption of Service as a result of force majeure events. For purposes of this Paragraph, "force majeure events" shall include, without limitation, satellite transponder failure, ground telecommunications failure, digital CDMA network outages, constraints, acts of God, natural disasters, strikes, acts of terrorism, civil disturbance, compliance with governmental laws or orders, and other events which are beyond reasonable control of QUALCOMM. CDMA network outages or constraints shall mean the availability of the digital CDMA network for the OmniExpress Service may be temporarily interrupted, curtailed or otherwise limited by factors including but not limited to atmospheric, environmental or topographical conditions; physical features such as buildings, tunnels or landmass features, coverage gaps, capacity constraints, or CDMA wireless provider network facilities changes, modifications, updates, relocations, repairs, maintenance or other similar activities necessary for the proper or improved operation of the CDMA provider network.

3.5. Service Warranty Remedies. In any month in which QUALCOMM does not provide at least 98% Service Availability for the OmniTRACS Service or the OmniExpress Service, Buyer shall be entitled to receive upon written request, a credit against Buyer's Service account for either the OmniTRACS Service or the OmniExpress Service, as applicable, an amount equal to (a) \$15.00 per Terminal, if Service Availability is less than 98% more than 95%, or (b) \$25.00 per Terminal, if Service Availability is 95% or less. In the event the Service Availability is less than 95% in any month, Buyer shall not be charged any monthly message charges for the OmniTRACS Service or the OmniExpress Service as applicable, for such month.

3.6. Buyer Data Retention Policy. The messaging and position location data generated by Buyer's use of the Systems is the property of Buyer. Buyer shall be solely responsible for establishing any data retention requirements and for long term data storage required for its own purposes. QUALCOMM will store Buyer's messaging and position location data for fourteen (14) days after receipt of acknowledgment of delivery to Buyer over telecommunications link with the NMC. QUALCOMM will maintain the messaging and position data during this fourteen (14) day period for accounting, system diagnostic, service and maintenance purposes and will each day automatically delete messaging and position data which has previously been stored for fourteen (14) days. Notwithstanding, in all cases the last position of each Terminal will be stored, which position may have been generated prior to the fourteen (14) day period. QUALCOMM's accounting summaries for messaging and character counts will be used for resolving any billing inquiries or disputes regarding billing for message services.

QUALCOMM may retain Buyer messaging and position location data: (i) beyond fourteen day period if QUALCOMM is notified by a third party to preserve such data for civil or criminal investigation or proceeding and, in the judgment of QUALCOMM's counsel, failure to comply with such request may subject QUALCOMM to civil or criminal liability; provided that in such event QUALCOMM will notify Buyer of such retention beyond fourteen day period unless such notification is otherwise prohibited by law; (ii) for long periods of time for temporary use in analyzing any System performance anomalies or similar maintenance purposes, provided that such data will be deleted after such use is completed; and (iii) indefinitely for use for other general purposes; provided that such data is used in combination with other compiled System user data and QUALCOMM removed any identification to Buyer. In addition, the wireless network provider for the OmniExpress Service will generate call data records ("CDRs") for billing and invoice purposes, and the wireless network provider may retain the CDRs for longer than the fourteen day period. QUALCOMM may modify this Buyer data retention policy on notice to Buyer.

3.7. QMASS. QUALCOMM's Multiple Access Software System ("QMASS") is an optional service using QUALCOMM's OmniTRACS or OmniExpress Systems. QMASS allows messages and position reports in Buyer's Message Service Account to be copied and sent to other OmniTRACS or OmniExpress customers via a telecommunication link. QUALCOMM's Network Management Facility. At Buyer's request, QUALCOMM will create a Customer Record File ("CRF") and a Mobile Record File ("MRF") at the NMF. The CRF allows QUALCOMM to send Buyer's QMASS copies to another customer, and the MRF determines the types of messages to be sent via QMASS.

3.7.1. QMASS Pricing. The price for QMASS shall be as stated in the contract. The price includes (i) Buyer's initial QMASS set up at the NMF, (ii) one (1) CRF, and (iii) one (1) MRF.

3.7.2. CRF Change Fees. Buyer may elect to add or change CRF records after the initial QMASS setup at the price stated in the contract. There is no charge for deletion of a CRF. Buyer shall notify QUALCOMM via email or via QUALCOMM's extranet site of the CRF addition or change, and QUALCOMM shall use reasonable efforts to perform the CRF change within seventy-two (72) hours of such notification.

3.7.3. MRF Change Fees. Buyer may elect for QUALCOMM to perform changes to Buyer's MRF after the initial setup of QMASS at the price stated in the contract. Buyer shall notify QUALCOMM via email or via QUALCOMM's extranet site of the requested MRF change, and QUALCOMM shall use reasonable efforts to perform the MRF change within seventy-two (72) hours of such notification. Provided Buyer has previously licensed from QUALCOMM either QTRACS/400 version 4.2 or QTRACS/Windows version 3.3 as set forth in 3.7.4 below, Customer may elect to perform MRF changes without QUALCOMM's assistance at no charge.

3.7.4. Software Version Requirements. In order to provide for the full functionality of QMASS, QTRACS/400 Software version 4.2 or QTRACS/Windows Software version 3.3 is required.

3.7.5. Data Retention. Buyer acknowledges that recipients of Buyer's message and position data via QMASS may retain such message and position data beyond, and may have elected data retention periods that differ from the data retention period elected by Buyer under the Contract. Accordingly, Buyer hereby waives the data retention period set forth in the Contract with regard to Buyer's message and position data sent via QMASS to other customers, and Buyer releases QUALCOMM from any liability therefor.

3.7.6. Right to Terminate QMASS. Buyer may terminate QMASS upon thirty (30) days prior written notice to QUALCOMM. QUALCOMM will close Buyer's CRF and MRF records within seventy-two (72) hours of such notification from Buyer. Notwithstanding, such termination shall not relieve Buyer of its obligations to pay for any QMASS services provided prior to the effective date of termination.

3.7.7. Corrective Action. Buyer understands that QUALCOMM reserves the right to take corrective action in the event that use of QMASS adversely impacts the satellite network operations or messaging capabilities of the Network Management Facility. Corrective action includes, but is not limited to, temporary interruption of messaging service pending a satisfactory resolution of the adverse impact.

3.8. International Use. QUALCOMM has not received permission to transmit or operate the OmniTRACS Service in Mexico and therefore Buyer is not authorized to use the OmniTRACS Service in Mexico under this Contract. Buyer may purchase the OmniTRACS Equipment and Service for use in Mexico through QUALCOMM's exclusive Mexico distributor. For vehicles dispatched from locations in Canada, Buyer is required to enter into a separate agreement directly with QUALCOMM's exclusive Canadian distributor. For vehicles dispatched from U.S. locations, Buyer may utilize the OmniTRACS Service from QUALCOMM under this Contract for its vehicles temporarily located in Canada, subject to the geographic coverage footprint of the U.S. satellite. QUALCOMM has not received permission to transmit or operate the OmniExpress Service in Mexico or Canada and therefore Buyer is not authorized to use the OmniExpress Service in Mexico or Canada under this Contract.

3.9. Unauthorized Use of the Service. Buyer shall not and shall ensure that End User shall not use the Services for any Unauthorized Purpose or in such a manner as to interfere with use by other Buyers of the Systems. "Unauthorized Purpose" includes: (i) use with intent to avoid payment of charges due under this Contract, (ii) access to, use of, alteration of, or destruction of the data files, programs, procedures, or information of Buyer or any other QUALCOMM Buyer, (iii) use with the intent to reverse engineer or clone the Systems, or (iv) use for any illegal or fraudulent purpose. QUALCOMM may, without liability to QUALCOMM, discontinue the Service to prevent use for an Unauthorized Purpose or in response to an order from the FCC or other government agency. QUALCOMM will use reasonable efforts to provide Buyer with no less than twelve (12) hours notification prior to discontinuing the Service. QUALCOMM shall restore the Service as soon as reasonably practicable. Buyer shall not be credited message charges for Service interruptions resulting from QUALCOMM's actions under this Section.

3.10. Dangerous Operation. The use of Terminals while the vehicle is in motion is DANGEROUS. Buyer shall instruct all of its drivers NOT TO USE THE SERVICE WHEN THE VEHICLE IS IN MOTION. If the vehicle is being driven by a team, the non-driver may operate the Terminal while the vehicle is in motion, provided the non-driver ensures such operation does not distract the driver. Buyer, at its election, may use the screen-blanking feature to prevent the use of the display unit while the vehicle is in motion.

3.11. Telecommunications Link. Buyer shall be responsible for all charges, nonrecurring and recurring, associated with the telephone ground communications link between Buyer's dispatch facility computer and QUALCOMM's Network Management Facility. Buyer shall elect either an 800 Number communications link, a TCP/IP Frame Relay Permanent Virtual Channel (PVC) communications link, or an Internet communications link. QUALCOMM shall have no warranty obligations in connection with any telephone ground communications link, other than to pass through to Buyer any warranties provided by the vendor or other provider thereof. If Buyer elects to use an Internet connection as part of its telecommunications link to QUALCOMM's Network Management Facility, Buyer shall be solely responsible for Buyer's retention of an Internet service provider. Buyer acknowledges and agrees that QUALCOMM will have no responsibility for Buyer's Internet communication link. Buyer shall be solely responsible for any and all Internet communications link initiation, service provider fees, maintenance support, and all additional expenses incurred by Buyer relating to the Internet communications link. Buyer further acknowledges and agrees that any interruption or break in the Internet communications link from Buyer's dispatch facility to QUALCOMM's Network Management Facility is specifically excluded from the service warranty provided in Section 3.4.

3.12. QTRACS/Web. QTRACS/Web Service (the "QTRACS/Web Service") QUALCOMM's proprietary web-based solution resident on a server at QUALCOMM facility (the "Server"). The QTRACS/Web Service allows Buyer to send and receive messaging and position data to and from its dispatch center and its drivers via the Internet using the OmniTRACS System. Access to the QTRACS/Web Service requires that Buyer have a personal computer and connection to the World Wide Web, both meeting QUALCOMM's specifications.

3.12.1. QTRACS/Web License. QUALCOMM grants Buyer a non-exclusive, transferable, revocable license (the "License") to access and use the QTRACS/Web Service in conjunction with the OmniTRACS System.

3.12.2. Use of the QTRACS/Web Service. QUALCOMM shall assign to Buyer a name and password for Buyer's use of the QTRACS/Web Service. Buyer shall be responsible for controlling use of the user name and password, including access to user name and password by Buyer's employees. Buyer shall immediately notify QUALCOMM of any unauthorized use of the password or user name or any other breach of security. QUALCOMM shall not be liable for any loss or damage arising from Buyer's failure to comply with the provisions set forth herein. In addition to the Unauthorized Purpose described in Section 3.9 above, Buyer shall not permit access by any third party or assign or transfer access to the QTRACS/Web Service or use the QTRACS/Web Service except as specifically contemplated by and set forth herein. Unauthorized use of the QTRACS/Web Service by Buyer as set forth herein is a material breach of the Contract and shall be subject to the prompt application of the termination provisions set forth in Section 5.2.

3.12.3. QTRACS/Web Data Retention. In addition to the Buyer Data Retention Policy set forth in Section 3.6, Buyer acknowledges that messaging and location data generated by Buyer's use of the OmniTRACS System in conjunction with QTRACS/Web Service ("Web Data") resides on the Server. The data retention period for the Web Data shall be selected by Buyer during the initial set-up of the QTRACS/Web Service and QUALCOMM shall have no liability therefor. Buyer shall have the option to select a data retention period for Web Data of between one (1) and fourteen (14) days, to which two (2) days will be added as a result of QUALCOMM's routine back-up procedures (the "Web Data Retention Period"). The Web Data Retention Period shall commence on the date that the Web Data is received by the Server. However, Buyer acknowledges and agrees that: (1) THE WEB DATA WILL BE RETAINED ON THE SERVER INDEFINITELY UNTIL SUCH WEB DATA IS ACTUALLY RETRIEVED BY BUYER; and (2) Buyer will be unable to access any Web Data residing on QUALCOMM's back-up repository. Buyer acknowledges that Web Data deleted from the Server by Buyer cannot be retrieved or recreated. QUALCOMM reserves the right to revise its data retention policy for the Server on Notice to Buyer.

The provisions set forth in the second paragraph of Section 3.6 relating to retention of QUALCOMM of data beyond the data retention period selected by Buyer shall also apply to Web Data. Buyer may modify the Web Data Retention Period at any time (the "Revised Web Data Retention Period"). All Web Data in the system at the time the Buyer selects the Revised Web Data Retention Period shall be retained in accordance with the Revised Web Data Retention Period.

3.12.4. QTRACS/Web Internet Service Provider. In order for Buyer to use the QTRACS/Web Service, Buyer shall be required to retain an Internet Service Provider ("ISP"). Buyer shall be solely responsible for the choice of such ISP, and any service provider fees, maintenance support, and any other expenses incurred by Buyer relating thereto. Buyer acknowledges and agrees that QUALCOMM shall have no responsibility for such ISP connection, any Internet communications link between Buyer's dispatch center and the Server, or any failure of any of those. Buyer further acknowledges and agrees its use of an ISP does not permit QUALCOMM to provide backup for the Service in the event of a failure of the ISP or Internet. Any interruption or break in the QTRACS/Web Service as a result of downtime or failure of any Internet or ISP connection is specifically excluded from the Service Availability warranty set forth in Section 3.4.

3.12.5. QTRACS/Web Service Warranty. The provisions set forth in Section 3.4 relating to Service shall also apply to the QTRACS/Web Service. Notwithstanding the Service Warranty set forth in Section 3.4, Buyer acknowledges that Buyer's access to the QTRACS/Web Service to send or receive messages or acknowledgment of receipt of messages by the IMGT is subject to the availability of the Internet or Buyer's connection.

4. INVOICING AND PAYMENT.

4.1. Invoicing and Payment. Equipment and Software will be invoiced upon shipment. Buyer shall pay all invoices issued within thirty (30) days from the date of invoice. A charge of the lesser of 1.5% per month or the maximum amount permitted by law will be added to past due accounts. All reasonable costs and expenses, including but not limited to attorney's fees, court costs and service charges incurred by QUALCOMM in collection of payment will be an expense of and charge to Buyer. If Buyer becomes delinquent in payment of any sum due, QUALCOMM, after ten (10) calendar days from the date of written notice to Buyer, shall not be obligated to continue performance under this Contract. To the extent this is a U.S. Government prime contract and QUALCOMM is the prime contractor, the payment terms shall be in accordance with Federal Acquisition Regulation (FAR) Part 52.212-4 (f).

4.2. Taxes. All prices and rates under this Contract do not include sales, use, excise, or similar taxes assessed at any time. Excepting those taxes imposed upon QUALCOMM income and FCC license fees, all applicable taxes and/or assessments shall be paid by Buyer. Buyer is responsible for payment of tax whether it is concurrently invoiced to Buyer with the original invoiced amount or subsequently invoiced based on QUALCOMM's review of facts affecting Buyer's tax status or determination that the laws of the state with which the Equipment, Software or Service was delivered requires assessment and collection of tax. In the event that QUALCOMM pays for any such taxes on behalf of Buyer, Buyer shall reimburse QUALCOMM in accordance with Section 4.1 above.

5. TERM AND TERMINATION.

5.1. Term. The term of this Contract shall commence upon the Effective Date and shall continue in effect for a period of one (1) year (the "Term"). Thereafter, the Buyer has the option to extend the Contract on a year-to-year basis (the "Extended Term") unless terminated by either party in writing on not less than ninety (90) days prior written notice to the other party prior to the applicable anniversary of the Effective Date.

5.2. Termination. The occurrence of any of the following shall constitute a material default and breach of this Contract and shall allow the non-defaulting party to terminate this Contract for cause after the expiration of the applicable period of cure, if any: (i) Any failure by Buyer to pay all sums which it is obligated to pay hereunder within ten (10) calendar days of written notice that such sum is due; (ii) Any unauthorized disclosure or use regarding the Equipment, Software or Service shall permit QUALCOMM to terminate upon written notice; (iii) Any event which would constitute a material default or breach of any agreement between Buyer and QUALCOMM, or with any third party for the lease of the Equipment, which is not cured within the time permitted for such cure, if any; or (iv) Any material default by either party other than those set forth above, which is not cured within thirty (30) calendar days after the defaulting party receives written notice of such default.

6. OTHER TERMS.

6.1. Confidentiality of Contract and Information. The terms of this Contract, including its pricing, are confidential information of QUALCOMM. Any business, operations, or technical information furnished by either party which is marked with a confidential or proprietary data legend shall be deemed to be the confidential information of such party ("Information"). During the Term and for a period of three (3) years thereafter, the receiving party shall (a) hold all information received from the disclosing party in confidence, (b) use such information only for the purpose of performance under this Contract, (c) reproduce such information only to the extent necessary for such purpose, (d) restrict disclosure of such information to its employees and consultants with a need to know in the course of fulfilling their scope of work, provided Buyer advises them of their confidentiality obligations, and (e) not disclose such information to any third party, without prior written approval of the disclosing party.

The restrictions on the receiving party's use and disclosure of Information shall not apply to any information which the receiving party can demonstrate: (i) is wholly and independently developed by the receiving party without the use of information of the disclosing party; (ii) is or has become generally available to the public without breach of this Contract by the receiving party; (iii) at the time of disclosure, was known to the receiving party to be free of restriction; (iv) is approved for release by written authorization of the disclosing party; or (v) is disclosed in response to a valid order of a court or other governmental body in the United States, but only to the extent of and for the purposes of such order; provided, however, that the receiving party shall first notify the disclosing party in writing of the order and permit the disclosing party to seek an appropriate protective order, unless such notification is otherwise prohibited by law.

Upon the termination or earlier cancellation of this Contract, each party shall promptly return to the other party or destroy (and certify such destruction) all confidential or proprietary information received. If the parties have executed a separate Non-Disclosure Agreement for the protection of confidential or proprietary information, the terms and conditions of such Non-Disclosure Agreement shall take precedence over this Section.

6.2. Limitation of Liability and Remedies. QUALCOMM's entire liability and Buyer's sole and exclusive remedies for any damages arising from the performance or nonperformance under this Contract shall be: (i) for breach of warranty for the Equipment or for installation or maintenance obligations relating to the Equipment, the repair or replacement remedies set forth in Section 1; (ii) for breach of warranty for the Software or for installation or maintenance obligations for the Software, the repair or replacement remedies set forth in Section 2; (iii) for breach of warranty for the Service, the credit remedies set forth in Section 3; and (iv) for claims other than as set forth above, QUALCOMM's liability shall be limited to direct damages proven in an amount not to exceed the greater of the amount paid by Buyer for the Equipment or the Service during the calendar year in which the claim arose.

If any of the remedies in subsections (i) through (iii) above fails of its essential purpose, Buyer's remedy shall be for QUALCOMM to repurchase from Buyer the Equipment and Software for which Buyer has a claim, in an amount not to exceed the purchase price paid for the Equipment, depreciated from the date of shipment, and the license fees paid for the Software, depreciated from the date of shipment.

IN NO EVENT SHALL QUALCOMM, ITS SATELLITE SERVICE PROVIDER, ITS WIRELESS NETWORK PROVIDER, OR ITS LICENSORS BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE EQUIPMENT, THE SOFTWARE, OR THE SERVICE PROVIDED UNDER THIS CONTRACT, EVEN IF QUALCOMM, ITS SATELLITE SERVICE PROVIDER, ITS WIRELESS NETWORK PROVIDER, OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.3. Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN SECTION 1 FOR THE EQUIPMENT, SECTION 2 FOR THE SOFTWARE, AND SECTION 3 FOR THE SERVICE, THE EQUIPMENT, SOFTWARE AND SERVICE PROVIDED UNDER THIS CONTRACT ARE PROVIDED "AS IS" AND THERE ARE NO OTHER WARRANTIES MADE BY QUALCOMM, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.4. Indemnification. Buyer shall indemnify, defend and hold QUALCOMM and its directors, officers, employees and agents harmless against any and all losses, claims, damages or expenses (including attorneys' fees) arising out of or related to: (i) any personal injury to or death of any person or persons, any loss or damage of any property or any interruption of services which are caused or claimed to have been caused directly or indirectly from Buyer's (including its employees or independent contractors) negligent use or intentional misuse of the Systems, including, without limitation, use of the Terminal by the driver of a vehicle which is in motion; (ii) use of any mounting bracket or other

equipment not provided or approved for use with the Equipment by QUALCOMM; (iii) use of the Systems by Buyer for an Unauthorized Purpose; (iv) data, voice call center or other information transmitted by Buyer, its employees or its independent contractors to the Systems, excluding any database provided by QUALCOMM; or (v) any material breach by Buyer of any of the terms and conditions of this Contract. To the extent this is a government prime contract and QUALCOMM is the prime contractor, the Government's liability hereunder is subject to the availability of appropriated funds at the time a contingency occurs.

6.5. Future Products. If QUALCOMM commercially introduces future equipment or software products ("Future Products") which provide substantially the same or improved functionality, and QUALCOMM makes such Future Products available to Buyer at prices which are no more than the prices for Equipment and/or Software supplied under Contract, QUALCOMM shall have the right to obsolete and discontinue supply of replaced Equipment and/or Software for unit purchase orders under the Delivery Scheme and subsequent orders.

6.6. Choice of Law, Venue and Attorney's Fees. This Contract shall be governed and construed under the laws of the State of California, without reference to its conflict of laws provisions. All disputes arising under this Contract shall be heard only by a court of competent jurisdiction in the County of San Diego, State of California. To the extent that a U.S. Government prime contract and QUALCOMM is the prime contractor, the Federal Common Law of Government Contracts shall be applied, but where no precedent is available then the law of the State of California including the 9th Circuit Court of Appeals shall apply. The extent that a state law question involving a U.S. Government prime contract is being decided, the law of the state of California shall govern. Nothing in this section shall prevent any party from seeking injunctive relief in a judicial proceeding of competent jurisdiction if interim relief from a court is necessary to preserve status quo pending resolution or to prevent serious and irreparable injury to that party or others, particularly where disputes involve intellectual property rights.

6.7. Assignability. Neither this Contract, nor any rights, duties or interest herein, shall be assigned, transferred or sublicensed by Buyer without QUALCOMM's prior written consent, not to be unreasonably withheld. Any such action shall be void and shall constitute material default entitling QUALCOMM to terminate this Contract.

6.8. Severability; Waiver. If any of the provisions of this Contract is determined to be unenforceable, the enforceability of the remaining provisions shall not in any way be affected or impaired, and the parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provision as closely as possible. The waiver by any party of a breach of any of the provisions of this Contract shall not operate as a waiver of any subsequent breach.

6.9. Survivability. The following provisions of this Contract shall survive any expiration, complete termination of this Contract: 3.8, 4.2, 6.1 through 6.4 inclusive, 6.6, 6.10, 6.12.

6.10. Notices. All notices must be in writing and shall be deemed given: (i) when delivered personally; (ii) when delivered by facsimile if confirmation of receipt is obtained; (iii) five (5) days after having been mailed registered or certified mail, return requested, postage prepaid; and (iv) one (1) day after having been mailed by overnight mail with a reliable express mail courier. Notices to QUALCOMM shall be addressed to QUALCOMM Incorporated 5775 Morehouse Drive, Suite T-770-G, San Diego, CA 92121-1714. Attn: Government Systems Contract Administration

6.11. Force Majeure. Except for the payment of money, neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by acts of God, natural disasters, strikes, acts of terrorism, civil disturbances, compliance with governmental laws or orders, or other events which are beyond reasonable control of such party, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible, and provided that the other party may terminate this Contract if such condition continues for a period of ninety (90) days without demonstration by the non-performing party of the ability to resume performance of its obligations within a reasonable period.

6.12. Export Compliance. Buyer understands that QUALCOMM is subject to regulation by agencies of the United States government, including the United States Department of Commerce, which prohibits export or diversion of certain products to certain countries. Buyer warrants that it will not permit or knowingly assist or participate in the transfer of QUALCOMM products or technical information to countries or to users not approved to receive such products or technical information under applicable United States laws and regulations.

6.13. Federal Acquisition Regulation ("FAR"). To the extent QUALCOMM is a subcontractor under a U.S. Government prime contract, the following FAR clauses are applicable to this Contract with the same force and effect as if printed in full text:

FAR 52.222-26 Equal Opportunity
FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans
FAR 52.222-36 Affirmative Action for Handicapped Workers

6.14. Entire Contract. This Contract contains the entire understanding, agreement, representations of the parties. This Contract supersedes all prior writings, discussions, understandings concerning the subject matter. Any additional or different terms, conditions proposed by Buyer or contained in any purchase order are rejected and shall be of no force and effect unless expressly agreed to in writing by QUALCOMM. In order to be binding, any amendment or modification of any of the provisions of this Contract must be in writing and signed by a duly authorized representative of each party.

Addendum 3: QUALCOMM Incorporated Commercial Services Terms and Conditions

ADDENDUM 3
QUALCOMM INCORPORATED COMMERCIAL SERVICE CONTRACT
TERMS AND CONDITIONS

1. COMMERCIAL SERVICES.

1.1. Definitions. The capitalized terms used in this Contract and not otherwise defined herein shall have the meaning ascribed to them as follows:

"Affiliates" shall mean any entity that directly or indirectly controls, or is controlled by, or is under common control by a party to this Contract. The term "control" in this Section shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

"Confidential Information" shall mean any confidential or proprietary information, including without limitation, any design tools, designs, schematics, source code, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plan, or financial or personnel matter relating to either party, its present or future services, sales, suppliers, customers, employees, compensation, investors or business, identified and marked by the disclosing party as "Confidential Information," whether in oral, written, graphic or electronic form. If disclosed in oral form, each party shall use reasonable efforts to reduce to writing and mark as Confidential Information.

"Deliverables" shall mean any designs, schematics, tools, code, technical data, inventions, know-how and any Documentation related to any of the foregoing.

"Delivery Date" shall mean, with respect to Services and Deliverables, the date stipulated on the Statement of Work for such Services and Deliverables to be completed by QUALCOMM.

"Documentation" shall mean any installation, operation, administrator and end user manuals, any configuration guides, any media containing any of the foregoing, as well as any other maintenance manuals, training materials and other technical and user documentation, including without limitation any schematics, design documents, analyses and technical overviews, as more fully described in the Statement of Work.

"Intellectual Property Rights" shall mean any and all intellectual property and/or proprietary information belonging to QUALCOMM, including without limitation, all mask work rights, all copyrights (including rights in audiovisual works), moral rights, trademarks, trade names, patent rights (including patent applications and disclosures) and trade secret rights, now known or hereafter recognized in any jurisdiction in the world.

"Schedule of Supplies and Services/Price Summary" means the schedule by which QUALCOMM will perform the Services and deliver the Deliverables and the corresponding price and payment schedule from Buyer.

"Service(s)" shall mean the technical support services to be performed by QUALCOMM on behalf of a Buyer specifically listed on the Statement of Work.

"Statement of Work" shall mean a written document agreed upon by the parties to identify Services and Deliverables to be furnished under the terms and conditions of this Contract. The Statement of Work shall contain, at a minimum: (i) the Statement of Work date; (ii) the Statement of Work number; if applicable, (iii) the specifications and requirements for the requested Services and Deliverables; and (iv) the designated performance delivery date and location for Services and/or Deliverables.

1.2. Term. This Contract shall be effective on the Effective Date and shall continue in effect thereafter for the period stated in the Contract (the "Term") unless terminated or modified in writing by mutual agreement of the parties. This Contract shall automatically expire at the end of its initial Term unless renewed by mutual agreement in writing signed by authorized representatives of the parties.

1.3. Services. QUALCOMM shall perform the Services described in the Statement of Work. The Services shall be performed with promptness and diligence in a thorough, workmanlike manner.

1.4. Statement of Work. The Services that Buyer desires QUALCOMM to perform will be defined in the Statement of Work document incorporated by reference to this Contract. Performance of Services and delivery of Deliverables shall be made strictly in accordance with the Delivery Date set forth in the Statement of Work. No delivery will be deemed complete until all Services have been performed and all Deliverables have been delivered for the applicable milestone. Modifications of the Statement of Work shall be made in writing by mutual agreement of the parties. If any such modification causes an increase or decrease in the price or the time required for the performance of this Contract or

otherwise affects any other provision of this Contract, QUALCOMM shall have the right to refuse to perform such modifications until an equitable adjustment is made in the price, delivery date, schedule, and/or other provisions as may be so affected and mutually agreed upon and this Contract shall be modified in writing according

1.5. Option to Temporarily Stop Work. Buyer may at any time during the performance of Services under this Contract direct QUALCOMM in writing to temporarily stop performance of any or all Services under this Contract (the "Stop Services Order"). Upon receipt of a Stop Services Order, QUALCOMM will immediately stop performing Services to the extent specified in the Stop Services Order and will take all reasonable steps to minimize the incidence of costs allocated to the work covered by the Stop Services Order. If Buyer exercises this right, the Stop Services Order period may not exceed fifteen (15) days. At the conclusion of the period specified above, Buyer may either: (i) direct QUALCOMM to resume providing Services under this Contract to the affected portion to which the Stop Services Order applied; or (ii) terminate the entire Contract or the portion of work to which the Stop Services Order applied; (iii) request a further delay in Services. Buyer shall have the right to direct QUALCOMM to resume the Services at any time during the period covered by the Stop Services Order. If any such Stop Services Order causes an increase or decrease in the price or the time required for the performance of this Contract otherwise affects any other provision of this Contract, QUALCOMM shall have the right to refuse to resume providing Services until an equitable adjustment is made in the price, delivery date, schedule, and/or other provisions as may be so affected and mutually agreed upon and this Contract shall be modified in writing according

1.6. Documentation. QUALCOMM agrees to provide Documentation specified in the Statement of Work.

1.7. Risk of Loss. Risk of loss or damage to Deliverables shall pass to Buyer upon delivery of such items to the Buyer's receiving dock.

1.8. Acceptance. Buyer may analyze the performance of any Service delivered of a Deliverable within five (5) days of completion of such Services to confirm that such Deliverable or Service meets the requirements set forth in the Statement of Work.

1.9. Payments. All payments shall be made in accordance with the Schedule of Supplies and Services/Price Summary. Invoices shall be payable within (30) days following receipt. If a dispute arises in connection with an invoice, the parties shall use their best efforts to resolve the dispute in accordance with Section 1.15 below. To the extent this is a U.S. Government prime contract and QUALCOMM is the prime contractor, the payment terms shall be in accordance with Federal Acquisition Regulations (FAR) Part 52.212-4 (j).

1.10. Taxes. All prices and rates under this Contract do not include sales tax, excise or similar taxes assessed at any time. Excepting those taxes imposed upon QUALCOMM's income and FCC license fees, all applicable taxes and assessments shall be paid by Buyer. Buyer is responsible for payment of taxes whether it is concurrently invoiced to Buyer with the original invoiced amount or subsequently invoiced based on QUALCOMM's later review of facts affecting Buyer's tax status or determination that the laws of the state where the Equipment, Software or Service was delivered requires assessment and collection of tax. In the event that QUALCOMM pays for any such taxes on behalf of Buyer, Buyer shall reimburse QUALCOMM in accordance with Section 1.9 above.

1.11. Intellectual Property Ownership. QUALCOMM shall retain sole and exclusive right, title and interest in and to any Intellectual Property Rights arising out of or related to the Services and/or Deliverables provided in performance of this Statement of Work. Buyer acknowledges and agrees that QUALCOMM is the owner of the same and that Buyer has no ownership or other rights except expressly provided in the Contract.

QUALCOMM hereby warrants to Buyer that, to its knowledge, as of the Effective Date, QUALCOMM has the Intellectual Property Rights and licenses necessary to perform its obligations under the Contract. Nothing contained in the Contract shall be construed as a warranty or representation by QUALCOMM: a) as to the validity or scope of any Intellectual Property Right; b) that any sale, lease or use will be free from infringement of Intellectual Property Rights of others; or c) to bring, prosecute or defend actions or suits against third parties for infringement.

1.12. Warranty. QUALCOMM represents and warrants to Buyer that the Services delivered or tendered hereunder will be as specified in the Statement of Work and will be performed by qualified personnel in a professional and workmanlike manner.

1.13. Termination for Convenience. Buyer may terminate this Contract at any reason at any time by submitting written notice to QUALCOMM. After receipt of a notice of termination, QUALCOMM shall (i) terminate all Services under this Contract and any related orders and subcontracts, (ii) negotiate all claims arising out of such termination, (iii) subject to the provisions of this Contract, deliver

Buyer all completed work, and (iv) submit to Buyer promptly, but not later than sixty (60) days from the date of termination, its termination claim. Upon termination by Buyer under this Section, Buyer shall pay to QUALCOMM: (i) the price for all Services and Deliverables which have been delivered by QUALCOMM in accordance with this Contract and not previously paid for, and/or (ii) the costs incurred by QUALCOMM to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated Contract, the reasonable cost of discharging liabilities, and the reasonable cost of contracts entered into prior to notice of termination which are so allocable or apportionable.

1.14. Termination for Cause. This Contract may be terminated upon any breach of the following material terms of this Contract by the non-breaching party: (i) QUALCOMM fails to perform the Services or make delivery of the Deliverable within the time specified herein or any extension thereof, or (ii) either party fails to perform any of the other provisions of this Contract or so fails to make progress as to endanger performance of this Contract in accordance with its terms and in either of these two circumstances in (i) or (ii) above does not cure such failure within a period of thirty (30) days (or such longer period as is reasonably necessary) after receipt of written notice from Buyer specifying such failure.

1.15. Choice of Law, Venue and Attorney's Fees. This Contract shall be governed by and construed under the laws of the State of California, without reference to its conflict of laws provisions. All disputes arising under this Contract shall be heard only by a court of competent jurisdiction in the County of San Diego, State of California. To the extent this is a U.S. Government prime contract and QUALCOMM is the prime contractor, the Federal Common Law of Government Contracts shall be applied, but where no precedent is available then the law of the State of California including the 9th Circuit Court of Appeals shall apply. The extent that a state law question involving a U.S. Government prime contract is being decided, the law of the state of California shall govern. Nothing in this section shall prevent any party from seeking injunctive relief in a judicial proceeding in a court of competent jurisdiction if interim relief from a court is necessary to preserve the status quo pending resolution or to prevent serious and irreparable injury to that party or others, particularly where disputes involve intellectual property rights.

1.16. Indemnification. To the full extent permitted by law, Buyer shall defend, indemnify and save harmless QUALCOMM and its Affiliates, customers, employees, subcontractors, agents and representatives from and against all claims, damages, losses, and/or expenses (including attorney's fees) that may be sustained by QUALCOMM by reason of bodily injury, sickness, disease or death to persons or damage to property occurring during the performance of the Work to the extent such is caused by the negligent or intentional wrongful acts or omissions of Buyer, its parent and subsidiary companies, its subcontractors, agents, or employees, or anyone employed by Buyer. To the full extent permitted by law, QUALCOMM shall defend, indemnify and save harmless Buyer, Buyer's Affiliates and subcontractors, its agents and employees from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, provided such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death to persons or damage to property to the extent such is caused by the negligent or intentional wrongful acts of QUALCOMM, its parent and subsidiary companies, or their agents and employees, or anyone directly or indirectly employed by QUALCOMM. To the extent this is a U.S. government prime contract and QUALCOMM is the prime contractor, the U.S. Government's liability hereunder is subject to the availability of appropriated funds at the time a contingency occurs.

1.17. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITED LIABILITY PROVISIONS CONTAINED IN THIS AGREEMENT ARE FUNDAMENTAL PARTS OF THE BASIS OF THE PARTIES' BARGAIN HEREUNDER, AND NEITHER WOULD AGREE TO THE TERMS HEREIN ABSENT SUCH LIMITATIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE ENTIRE LIABILITY OF QUALCOMM AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER, FOR ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL NOT EXCEED THE PURCHASE PRICE IN THE CONTRACT.

1.18. Insurance. Each party shall, at all times during the term of this Contract, at its own cost and expense, carry and maintain the insurance coverage of the types and forms of policies reasonably customary in the industry and of a type reasonable to carry out the purpose and intent of this Contract. If so requested, each party shall forward to the other certificates of such insurance issued by the insuring carrier(s) and signed by the insuring carriers authorized representative.

2. OTHER TERMS.

2.1 Confidentiality of Contract and Information. Buyer agrees that the terms of this Contract, including but not limited to, the pricing contained in the Contract, and any Confidential Information obtained from examination of the Services, Deliverables, or any technical documentation furnished by QUALCOMM hereunder (whether or not marked with a confidential or proprietary data legend) shall be deemed to be QUALCOMM's Confidential Information. Neither party shall,

except as necessary for the performance of this Contract, duplicate, use or disclose to any third person (including any affiliated company) any such Confidential Information, without the prior written approval of the disclosing party, except as any such disclosures which are required by law or regulation. Upon the termination or earlier cancellation of this Contract, each party shall promptly return to the other party all Confidential Information received. If the parties have executed a separate Non-Disclosure Contract for the protection of Confidential Information, the terms and conditions of such Non-Disclosure Contract shall take precedence over this Section to the extent inconsistent herewith.

2.2. Assignability. Neither this Contract, nor any rights, duties or interest herein, shall be assigned, transferred or sublicensed by Buyer without QUALCOMM's prior written consent, not to be unreasonably withheld. Any such assignment shall be void and shall constitute a material default entitling QUALCOMM to terminate this Contract.

2.3. Severability; Waiver. If any of the provisions of this Contract are determined to be unenforceable, the enforceability of the remaining provisions shall not in any way be affected or impaired, and the parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provision as closely as possible. The waiver by one party of a breach of any of the provisions of this Contract shall not operate as a waiver of any subsequent breach.

2.4. Survivability. The following provisions of this Contract shall survive any expiration or complete termination of this Contract: 1.1, 1.11, 1.13, 1.14, 1.16, 1.17, 1.18 and 2.

2.5. Notices. All notices must be in writing and shall be deemed given when delivered personally; (ii) when delivered by facsimile machine if confirmation of receipt is requested and obtained; (iii) five (5) days after having been mailed by registered or certified mail, return receipt requested, postage prepaid; and (iv) one (1) day after having been mailed by overnight mail with a reliable express messenger. Notices shall be addressed or delivered to QUALCOMM Incorporated, 5575 Morehouse Dr., Suite T-770-G, San Diego, CA 92121-2779, Attn: Government Contracts Administration.

2.6. Force Majeure. Except for the payment of money, neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by acts of God, natural disasters, strikes, acts of terrorism, civil disturbances, compliance with governmental laws or orders, or other events which are beyond the reasonable control of such party, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible, and provided that the other party may terminate this Contract if such condition continues for a period of ninety (90) days without demonstration by the non-performing party of the ability to resume performance of its obligation within a reasonable period.

2.7. Independent Contractor Relationship. The relationship between the parties under this Contract is that of independent contractors, and neither party is an employee or agent of the other party. Neither party is authorized or empowered to act as an agent for the other party, not to transact business, incur obligations, buy goods in the other party's name or for the other party's account. This Contract does not constitute, and shall not be deemed to constitute a joint venture, partnership between the parties hereto, and neither party shall be deemed to be an agent of the other, or have authority to bind, obligate or make an agreement for the other party.

2.8. Federal Acquisition Regulation ("FAR"). To the extent QUALCOMM is a subcontractor under a U.S. Government prime contract, the following FAR clauses are applicable to this Contract with the same force and effect as if printed in full text:

FAR 52.222-26 Equal Opportunity

FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans

FAR 52.222-36 Affirmative Action for Handicapped Workers

2.9. Entire Contract. This Contract contains the entire understanding, agreement and representations of the parties. This Contract supersedes all prior writings, discussions and understandings concerning the subject matter. Any additional or different terms or conditions proposed by Buyer or contained in a purchase order are rejected and shall be of no force and effect unless expressly agreed to in writing by QUALCOMM. In order to be binding, any amendment or modification of any of the provisions of this Contract must be in writing and signed by a duly authorized representative of each party.

5 Statement of Work

Addendum 4: Statement of Work

The Commercial Services for IMCT installation and operational training will be conducted by QUALCOMM certified personnel at the mutually agreed upon single location between NETF-01 and QUALCOMM within the continental U.S.

The IMCT installation and operational training shall not exceed three (3) days in length for up to five (5) students. A training package will be provided at the beginning of the session. All training material shall be in QUALCOMM commercial format. The training course will be conducted in English. NETF-01 shall have and make available the four (4) vehicles for the installation and training period.

The Commercial Services to be provided herein include travel to and from the training and installation site and per diem expenses for one (1) QUALCOMM approved personnel while at the training and installation site.